

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MICHAEL C. DWYER,

Plaintiff,

vs.

EAGLE MARINE SERVICES, LTD., et al.,

Defendants.

Case No: C 10-5734 SBA

**ORDER DIRECTING PLAINTIFF  
TO FILE RESPONSE TO  
DEFENDANT'S MOTION TO  
DISMISS**

On April 29, 2013, Defendant filed a motion to dismiss. Dkt. 16. Under Civil Local Rule 7-3(a), an opposition to a motion must be filed within fourteen days of the date the motion was filed, and the reply is due seven days thereafter. As such, Plaintiff's response to the motion should have been filed by no later than May 13, 2013. To date, Plaintiff has not filed any response to Defendant's motion.

This Court's Standing Orders warn that the failure to file a response to a motion may be construed as consent to the relief sought in the unopposed motion. Dkt. 7. As such, it is well within the discretion of the Court to grant Defendant's motion as unopposed and dismiss the action. See Fed. R. Civ. P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Nevertheless, mindful of its obligation to first consider to less drastic alternatives, the Court will afford Plaintiff one further opportunity to respond to the pending motion. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff shall have until June 26, 2013 to file and serve his response (i.e., either an opposition or a statement of non-opposition) to Defendant's motion to dismiss. Plaintiff's response shall comply in all respects with the Federal Rules of Civil Procedure and the Court's Civil Local Rules including, without

1 limitation, Civil Local Rules 7-3 through 7-5. **PLAINTIFF IS WARNED THAT THE**  
2 **FAILURE TO FILE A RESPONSE BY THIS DEADLINE AND/OR TO COMPLY**  
3 **WITH THIS ORDER OR ANY OTHER APPLICABLE PROCEDURAL RULES**  
4 **WILL RESULT IN THE GRANTING OF THE PENDING MOTION AND THE**  
5 **DISMISSAL OF THIS ACTION.** In the event Plaintiff timely files a response,  
6 Defendant may file a reply seven days after the deadline for Plaintiff's response.

7 IT IS SO ORDERED.

8 Dated: June 13, 2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 MICHAEL C. DWYER,

5  
6 Plaintiff,

7 v.

8 EAGLE MARINE SERVICES, LTD. et al,

9 Defendant.  
10 \_\_\_\_\_/

11 Case Number: CV10-05734 SBA

12 **CERTIFICATE OF SERVICE**  
13

14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
15 Court, Northern District of California.

16 That on June 12, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
17 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
18 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
19 located in the Clerk's office.  
20

21 Michael C. Dwyer  
22 10581 Englewood Drive  
23 Oakland, CA 94605

24 Dated: June 12, 2013

Richard W. Wieking, Clerk

25 By: Lisa Clark, Deputy Clerk  
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